



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33380799

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a film producer and cinema expert, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). A remand is warranted in this case because the Director's decision is insufficient for review as the decision lacks sufficient analysis and discussion of the evidence in the record and reaches conclusory findings with respect to the Petitioner's eligibility for the requested classification. Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of

the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner stated that he accomplished numerous achievements in his field of expertise which have been recognized on both a national and international level. Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied four of these criteria, summarized below:

- (iii), published material about the individual in professional or major media
- (v), original contributions of major significance
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation
- (ix), evidence that the individual commanded a high salary

The Director concluded he did not meet any of the claimed criteria and the Petitioner maintains on appeal that he meets the four claimed criteria. On appeal, the Petitioner also asserts the Director made numerous factual errors and did not fully explain the reasons for denying the petition. The record supports the Petitioner's claims. Upon review, we find that the Director's decision did not adequately address all the claimed evidentiary criteria or analyze the evidence provided and did not fully explain the reasons the petition was denied.

For example, in the Director's decision, a section was entitled, "Inconsistencies in the record" whereby she outlined several of the documents submitted by the Petitioner and stated that the Petitioner "provided a volume of evidence that was insufficient to establish eligibility," but does not provide any explanation as to what analysis the Director is doing in this part of the decision for this classification. It appears that the Director is concerned that the Petitioner did not provide employment verification letters from his employers; however, the Petitioner did in fact submit the requested documentation even though this is not required evidence for this classification. In addition, the Director noted the Petitioner did not provide evidence of his education level from the priority date but a review of the submitted evidence does in fact show the Petitioner submitted this evidence in response to the request for evidence.

In addition, the Director noted in the decision that the Petitioner failed to provide a properly certified translation of the documents submitted in support of the evidentiary criteria and therefore, the documentation was not probative. However, the Director did not explain why the Petitioner's

translation was not considered a properly certified translation of foreign documents and did not meet the standard as outlined in 8 C.F.R. § 103.2(b).

In the denial's analysis of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) regarding published material about the Petitioner, the Director noted the Petitioner failed to provide a properly certified translation of the documents but did not explain the problem with the certification. In addition, the Director does not address the evidence the Petitioner submitted in support of this criterion with any specificity and instead summarily concluded that the evidence was insufficient.

In the denial's analysis of the criteria at 8 C.F.R. § 204.5(h)(3)(v) regarding original contributions and at 8 C.F.R. § 204.5(h)(3)(viii) regarding evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Director stated that the Petitioner provided letters of recommendation where the writers made general references to the petitioner's reputation and noble contributions, however, the "writers attested information and work history that is not corroborated or verified by a current or former employer." The regulations do not require evidence from a former or current employer to verify original contributions and the Petitioner has indicated in the response to the request for evidence that he submitted a letter from his former employer that the Director did not sufficiently discuss. The Director also noted the evidence had insufficient translation certification but did not further explain.

Although the Director acknowledged that the Petitioner submitted a "volume of evidence," the Director's decision did not address the evidence the Petitioner submitted with specificity and improperly dismissed evidence without proper explanation. When denying a petition, an officer shall explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). An officer must fully explain the reasons for denial to allow the petitioner a fair opportunity to contest the decision and our opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's errors deprived the Petitioner of a fair opportunity to appeal the denial and inhibit our ability to meaningfully review the denial on appeal.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. In doing so, the Director should also review the Petitioner's appellate brief and documentation, which further addresses the previously submitted evidence.

As the Director did not conclude that the Petitioner met the initial evidence requirements, the decision did not include a final merits determination. If after review the Director determines that the Petitioner received a major, internationally recognized award or satisfied at least three criteria at 8 C.F.R. 204.5(h)(3), the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.